ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

August 19, 2002

Ms. Marlene H. Dortch
Federal Communications Commission
445 12th Street, S.W., Room 1-A836
Washington, D.C. 20554

Re: Notice of *Ex Parte* Presentation in CC Docket Nos. 96-98, 98-147, 01-338, 02-33

Dear Ms. Dortch:

Pursuant to Sections 1.1206(b)(2) of the Commission's Rules, this letter is to provide notice in the above-captioned docketed proceedings of an ex parte meeting on August 16 by Jonathan Askin of the Association for Local Telecommunications Services, Jason Oxman of Covad, Kevin Joseph of Allegiance, Pat Donovan and Rich Rindler of Swidler Berlin, John Heitmann of Kelley Drye, and Mike McNeeley of Gray Carey with Christopher Libertelli, Legal Advisor to Chairman Powell. During the meeting, the parties generally discussed CLEC concerns regarding the above-captioned proceedings and the potential consequences of the DC Circuit's recent decision in *USTA v. FCC*. The parties stressed the need for the FCC to seek Supreme Court review of the DC Circuit opinion. The parties emphasized the need for the FCC to preserve the ILECs' unbundling obligations and the potential setbacks to competition and broadband deployment if the FCC were to disrupt the pro-competitive framework established by the Telecom Act and the FCC and state implementing rules.

With regard to the request that the FCC seek stay and Supreme Court review of the UNE Remand/Line Sharing Decision (*USTA v. FCC*), the parties noted that the Appeals Court failed to give sufficient deference to the FCC which could jeopardize the FCC's regulatory authority in every area subject to FCC jurisdiction. Furthermore, the parties noted that the list of unbundled network elements is the bedrock foundation of local competition policy. Without a definitive statement from the Supreme Court, the list of unbundled network elements is going to be unstable, and subject to conflicting court decisions, for years. The industry needs judicial certainty.

The parties stressed that the FCC must preserve the broad and flexible UNE regime. CLECs are providing facts that show that the Bells still retain monopoly control over bottleneck facilities. CLECs must rely upon the Bells' loops and transport to reach customers. In contrast, the Bells, in their drive to eliminate unbundled elements nationwide, continue to paint with the very broad, "all-market" brush rejected by the DC Circuit. The Bells' have been making rhetorical arguments that they face competition since the mid-1980's. The FCC should not accept the Bells' rhetoric. The facts show that access to unbundled loops and transport is critical to CLECs' ability to compete, and unbundling should still be required. The existing unbundling rules provide enormous benefits to consumers – lower prices, innovative voice and data services, etc. In fact, the CLECs make more innovative use of the ILECs' facilities than the ILECs themselves. The FCC should not issue any blanket changes to the unbundling rules until it gathers more evidence – through fact-based hearings and by working closely with the states.

The parties noted that the inter-modal/intra-modal competition model is a false distinction. CLECs build their own networks and then use pieces of the ILEC network where they cannot build their own. Some CLECs use their cable plant, others use fixed wireless, others use fiber, others use copper. These facilities-based companies do not fit into either the inter-modal or intra-modal definitions. This language only muddies the analysis and biases the debate against unbundling. The danger is that CLECs will have no choice but to stop building new

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networks if they cannot get access to the necessary unbundled network elements. Unbundling is essential to promote facilities-based investment.

The parties also noted that the FCC must adopt and enforce metrics for special access and UNE provisioning in order to stop ILEC anticompetitive provisioning practices and ensure that consumers have a fair choice among competing services. Current ILEC provisioning processes undermine CLECs' ability to compete. For example, we should receive unbundled loops in 3-5 days, not 30 days. These excessive delays in customer connections allow the Bells to engage in unlawful winback programs.

If you have any questions about this matter, please contact me at 202-969-2587.

Respectfully submitted,

/s/

Jonathan Askin

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